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May 16, 2003

Via Hand Delivery

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals, TW-A325
445 Twelfth Street, SW
Washington, DC 20554

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MAY 16 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MB Docket No. 02-277

Dear Ms. Dortch:

Nexstar Broadcasting Group, L.L.C., by its attorneys, hereby submits the following information with regard to the above-referenced, pending rulemaking proceeding involving the 2002 Biennial Review of the Commission's broadcast ownership rules. Nexstar filed comments and reply comments in this proceeding, in which Nexstar discussed solely the issue of television duopoly in medium and small markets. Nexstar is submitting this further information in light of recent press reports as to the Commission's current direction on that aspect of the proceeding.

The issue of local TV duopoly – that is, the ability of a broadcaster to own two television stations in the same market – is not about profits for medium and small market TV broadcasters. It is about survival. We understand from trade press reports that the Commission may be considering a draft order that would allow TV duopoly in medium and small markets if there are six or more stations in a market, <u>except</u> that the owner of a station within the top four rated stations could not acquire another station within the top four. This exception would consume the rule.

Commissioner Abernathy was quoted recently in the trade press as stating that the Commission's proposed increase in the national ownership cap requires strong local affiliates in order to counter-balance network power. Yet the proposal to preclude TV duopolies among the top four stations in medium and small markets will make network-affiliated stations in these markets weaker, not stronger.

We are not talking about New York, Chicago or Los Angeles, or even Atlanta, St. Louis or Phoenix. Nexstar owns (or is in the process of acquiring) TV stations in 15 markets. Nexstar's largest market is DMA #53, Wilkes-Barre/Scranton, Pennsylvania, and its smallest market is DMA #193, St. Joseph, Missouri. In many markets smaller than the top 50, the third and fourth ranked stations struggle to survive. Studies have shown that in such markets the third ranked local news operation will always be unprofitable, and some stations in that situation have ceased broadcasting local news.

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And in many markets of this size, the number four ranked station (typically the Fox affiliate) does not broadcast local news at all.

In market #143, Erie, Pennsylvania, Nexstar, which owns the ABC affiliate and is involved with a grandfathered time brokerage agreement with the Fox affiliate, produces a 10:00 p.m. local news for the Fox affiliate. Before it entered into this arrangement, the Fox affiliate was struggling to remain on-the-air and had absolutely no local news. Now the Erie market is served by a 10:00 p.m. local news on the Fox affiliate, as well as the traditional 11:00 p.m. local news broadcasts on the ABC, CBS and NBC stations. Clearly this serves the public interest; but if the rumored proposal is enacted, and if Nexstar's grandfathered time brokerage agreement is not extended, presumably Nexstar will have to terminate its time brokerage agreement with the Fox affiliate and the station will be back to the barely surviving, struggling status it suffered before the time brokerage agreement began.

Nexstar urges the Commission to focus on the following issue: A TV broadcaster with no other media interests in a market should be able to own two television stations in the market, regardless of station rankings, assuming the market is above a particular size. Nexstar, in its comments and reply comments, advocated that a broadcaster should be able to own two commercial stations in a market with four or more commercial stations. We understand from trade press reports that the current proposal is six stations. That is acceptable as long as the number includes noncommercial stations (which, after all, do comprise another voice in the market and the Commission's concern here seems to be diversity of the purveyors of ideas rather than economic competition). The number also should include LPTV stations, especially those carried on local cable television systems. In a number of markets in which Nexstar has stations, there are LPTV stations affiliated with networks such as UPN which have attained cable television carriage and which function for all intents and purposes as local television stations, including having programming that is available to most viewers in the market and sale staffs who compete with Nexstar's sales staffs.

Furthermore, if the Commission's concern is economic competition as well as diversity of voices, then the Commission should factor in local cable television sales rep firms (sometimes called cable "interconnects"), which sell the local advertisements for national cable programming services such as ESPN, CNN and USA Network. Such local sales rep firms typically sell as much advertising in a market as the third or fourth ranked local television station. Nexstar's sales staffs in its markets compete with the sales staffs of these local cable interconnects, and in many cases the cable interconnects compete with Nexstar for sales staff. The cable interconnects, often under common ownership with the dominant cable operator in a market, have the financial wherewithal of monthly subscription fees from cable subscribers, so they are able to pay their advertising sales staffs more than television stations are able to pay. Television stations do not have the benefit of such "dual revenue streams."

Chairman Powell has been quoted recently as saying that the Commission should not make decisions in this rulemaking proceeding as if we were still in the days of black and white television. Nexstar would take this analogy one step further: We should not be making analog decisions in a digital age. All of Nexstar's stations must make the capital expenditures necessary to build digital transmission facilities, without any realistic hope of revenues from those expenditures any time soon. Yet the days of network dominance (and of local dominance by network affiliated stations) are over. Our local sales staffs compete with cable interconnects (as described above), with LPTV stations, and with radio broadcasters who now in almost every market are selling the inventory of clusters of six, seven or eight stations. And our national and regional sales reps compete with the national and regional cable channels, which every year seem to have more total viewers, meaning that every year the network affiliated stations have fewer viewers. In this context, it makes absolutely no sense to prevent the third ranked station in a market from acquiring the fourth ranked station. Or the number two station from acquiring the number four station.

For example, in the Wilkes-Barre/Scranton market (#53), which has seven TV stations, the ABC affiliate, owned by the New York Times, has been the dominant station for many years and typically has 40 percent or more of the in-market share of audience. Under the current proposal as we understand it, the New York Times could acquire another station, as long as the station being acquired is ranked fifth or lower, but Nexstar, which owns the NBC affiliate, could not acquire the CBS affiliate even if those stations' combined audience shares are less than the Times station's current share as the number one station. That makes no sense at all. Worse yet, under the Commission's proposal, Disney, which owns ABC and several cable TV networks, could acquire the New York Times ABC affiliate in the market and a second station (as long as the second station is ranked fifth or lower) and use the company's national dominance to bring the station into the top four over time; but Nexstar could not acquire the CBS affiliate in order to remain competitive locally with such a force. Why?

Nexstar urges the Commission not to lose sight of this issue in light of all the other issues in this rulemaking proceeding, or else the Commission again will wind up causing "unintended consequences" such as those the Telecommunications Act of 1996 created in the radio industry. Without real duopoly relief in medium and small markets, the big will get bigger and the smaller companies will be squeezed out of the business.

Very truly yours,

Howard M. Liberman

Howard M. Liberman

CC: Chairman Powell (via fax)
Commissioner Abernathy (via fax)
Commissioner Adelstein (via fax)
Commissioner Copps (via fax)
Commissioner Martin (via fax)
Linda Senecal (via e-mail)
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